



Congress of the United States

House of Representatives

Washington, DC 20515

March 8, 2006

The Honorable Vernon J. Ehlers, Chairman
Committee on House Administration
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We are writing to request that you hold an oversight hearing in the Committee on House Administration to investigate the engrossment and enrollment procedures used to process S. 1932, the budget reconciliation bill which passed the House in a form not reflected in the text ultimately presented to the President. Errors in the handling of this bill have been acknowledged by the Leadership of both chambers, which create serious doubt whether this measure ever could have become law, despite the President's purported signature on the papers delivered to him by the Senate and the assignment of a public law number by the Archivist of the United States (P.L. 109-171).

This incident strikes at the very core of Congress' law-making powers and the legitimacy of our constitutional system. The most significant question before us is whether Congress can still take action right now to correct S. 1932, and, if so, in what manner. A challenge has already begun in Federal District Court regarding the constitutionality of the bill.

Engrossment, enrollment and presentment are the mechanisms by which Congress executes the Constitution's mandates for passage of a bill by both Houses in identical form, and its subsequent transmittal to the President. Both chambers perform these functions with ultimate enrollment and presentment the responsibility of the originating chamber, with the Secretary of the Senate handling "S." numbered bills and joint resolutions and the Clerk of the House their "H." numbered counterparts.

Jurisdiction over these issues resides in our Committee, pursuant to clause 4(d)(1)(B) of Rule X giving us oversight over all functions of the Clerk's office under both rule and statute. The Committee on Enrolled Bills, created in 1789 and existing almost continuously thereafter, was folded into our Committee upon its creation in the Legislative Reorganization Act of 1946. Direct responsibility for supervision of the engrossment, enrollment and presentment process resided in the House Administration Committee from its creation in 1947 until the beginning of the 107th Congress in 2001. The chairman of the Committee would inform the House that measures had been found truly enrolled before they were presented to the President and these notices were printed in the Congressional Record.

Because of concerns by the Speaker about the possible politicization of the manner in which the Committee was executing these functions, House rules were changed to transfer the duties to the Clerk,

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with the Committee on House Administration assigned an oversight role. To the Minority's knowledge, no direct oversight activities by the Committee have been conducted since the rules change took effect. This is the right time to re-examine the issue of whether the new procedures have worked properly.

Clause 2(d)(1) of Rule II now requires the Clerk to certify the passage of all bills and joint resolutions. Clause 2(d)(2) provides that: "The Clerk shall examine all bills, amendments, and joint resolutions after passage by the House and, in cooperation with the Senate, examine all bills and joint resolutions that have passed both [chambers to ensure] that they are correctly enrolled and forthwith present those bills and joint resolutions that originated in the House to the President in person after their signature by the Speaker and the President of the Senate, and report to the House the fact and date of their presentment." Section 648 of the House Manual states that "The Clerk and the Secretary of the Senate make comparisons of bills of their respective [chambers] for enrollment, and the two cooperate in the interchange of bills for signature."

The functions of engrossment and enrollment are shared inextricably with the Secretary of the Senate. Any action by the other body taken in concert with the Clerk, and the Clerk's knowledge of those activities, would fall within the ambit of the Committee's jurisdiction.

We would expect the Committee to call as witnesses Members, the Clerk of the House, her subordinates and any other House officials and staff who were involved with, had any knowledge of, or engaged in actions related to the processing of S. 1932. We would also like to hear from the Secretary of the Senate about actions taken by her office, where the problem began, since our Committee may need to consider proposing joint procedures which might reduce the possibility of errors in the future. Such testimony would reveal what happened, and how to prevent it from happening in the future. Chairman Nussle of the Budget Committee, which was the committee of jurisdiction over S. 1932, has called publicly for the firing of the Senate staffer involved, which would be a matter within the purview of the Secretary.

It has been widely reported that a number of officials in both chambers were aware of a problem long before final House action on the bill. Who were they? Was the Minority informed? Why were any of a number of possible corrective procedural steps not taken after the Senate enrolling clerk made her initial error in the engrossment of the Senate amendment to S. 1932, which changed the amendment into a form which did not reflect the actual text passed by the Senate, and the erroneous bill as amended was then messaged to the House. These possible steps included:

(1) transmittal of the erroneous engrossment back to the Senate prior to any House action; this could have been accomplished by unanimous consent, adoption of a resolution reported from the Rules Committee, or through a resolution adopted as a question of the privileges of the House pursuant to Rule IX; the Senate clerk would then have corrected the amendment without further action or vote by that chamber. Reports that this method might not have been considered because of a potential Senate filibuster are not accurate;

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(2) following House passage, the erroneous enrollment could have been corrected by adoption of a concurrent resolution passed by both chambers; or

(3) following presentment of the bill to the President, a concurrent resolution could have been adopted asking the President to return the bill for correction.

In addition, according to Hinds-Cannon Precedents, vol. 4, sec. 3506, precedent exists for the President to vacate his signature on an improperly enrolled bill and return it to Congress. Perhaps this procedure could be used today, irrespective of the presence of a public law number on the act.

Instead, nothing was done and the papers passed out of Congress' control. The President signed the bill on February 8, 2006. On that same day, the Senate by unanimous consent passed an apparently unique form of legislation, Senate Concurrent Resolution 80, which provides that the enrollment of the bill as presented to the President "is deemed the true enrollment of the bill reflecting the intent of the Congress in enacting the bill into law." This is a classic example of closing the barn door after the horses have fled. A concurrent resolution passed by Congress after the bill has been signed into law could not have any effect on the status of actual text. The House has not attempted to act on S. Con. Res. 80 for these reasons.

We ask that you schedule the oversight hearing as soon as possible, following consultation with the Minority, to examine why this potential constitutional predicament occurred and what can be done to cure the problem.

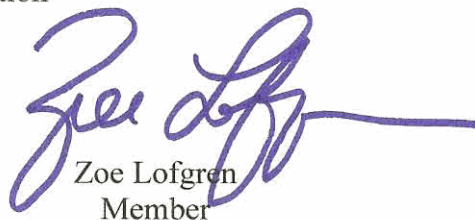
Sincerely,



Juanita Millender-McDonald
Ranking Member
Committee on House Administration



Robert A. Brady
Member
Committee on House Administration



Zoe Lofgren
Member
Committee on House Administration